

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**TINA GREGORY, Individually,
and as Mother of and Next of Kin for
B.A.M., a minor, and
B.A.M., individually,**

Plaintiffs,

**CITY HOSPITAL, INC., d/b/a
BERKELEY MEDICAL CENTER;
UNIVERSITY HEALTH CARE;
UNIVERSITY MEDICAL CENTER;
SHENANDOAH MEDICAL CENTER;
SHENANDOAH WOMEN’S HEALTH;
SHENANDOAH COMMUNITY
HEALTH CENTER; SHENANDOAH
MIDWIFE, INC., SHENANDOAH
VALLEY MEDICAL SYSTEM, INC.,
CONSUELA CRUDEN-PARHAM, MD;
LISA WYATT, CNM; WEST VIRGINIA
UNIVERSITY HOSPITALS, INC.; and
REBECCA PFENDER, CNM, N-C-NP,**

Defendants.

**Civil Action No. 3:15-cv-129 (Groh)
(Removal of case 15-C-419 from the Circuit
Court of Berkeley County, West Virginia)**

Electronically filed: November 23, 2015

NOTICE OF REMOVAL

The United States of America, by William J. Ihlenfeld, II, United States Attorney for the Northern District of West Virginia, and Erin K. Reisenweber, Assistant United States Attorney for said District, hereby respectfully files this Notice of Removal based upon the following:

1. Shenandoah Valley Medical System, Inc. (“Shenandoah”); Shenandoah Women’s Health; Shenandoah Community Health Center; Dr. Consuela Cruden-Parham, MD; Lisa Wyatt, CNM; and Rebecca Pfender, CNM, C-C-NP, are defendants in Civil Action No. 15-C-419 now

pending in the Circuit Court of Berkeley County, West Virginia. Civil Action No. 15-C-419 was commenced against said Defendants, and others, by the filing of Plaintiffs' Complaint on or about July 30, 2015, and Plaintiffs' Amended Complaint, filed on or about October 20, 2015. (Copies of these pleadings are attached hereto as Exhibit 1).

2. At the time of the incidents alleged in the Complaint, Dr. Cruden-Parham, Lisa Wyatt, CNM; and Rebecca Pfender, CNM, C-C-NP, were employees of Shenandoah, which was an entity receiving federal grant money from the United States Public Health Service pursuant to 42 U.S.C. §§ 254b or 254c. Pursuant to 42 U.S.C. §§ 233(g) and (h), the United States Department of Health and Human Services (HHS) deemed Shenandoah and its employees eligible for malpractice coverage under the Federal Tort Claims Act (FTCA) effective January 1, 2013. (A copy of the deeming letters of HHS is attached hereto as Exhibit 2.)

3. The Attorney General, by the United States Attorney for the Northern District of West Virginia, has certified, pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), that Dr. Cruden-Parham; Lisa Wyatt, CNM; Rebecca Pfender, CNM, C-C-NP; and Shenandoah were acting within the scope of their employment at the time of the incidents alleged in the complaint, and that, pursuant to 42 U.S.C. §§ 233(g) and (h), Dr. Cruden-Parham; Lisa Wyatt, CNM; Rebecca Pfender, CNM, C-C-NP; and Shenandoah are deemed to be employees of the United States for FTCA purposes only for any acts or omissions in connection with their employment that occurred after January 1, 2013. (A copy of the Certification of Scope of Employment as referenced herein is attached as Exhibit 3).

4. Both 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) provide that upon certification by the Attorney General that a defendant was acting within the scope of employment at the time of the incident out of which the action arose, any civil action or

proceeding commenced in a State Court shall be removed without bond at any time before trial by the Attorney General to the District Court of the United States of the district and division embracing the place in which the action or proceeding is pending and, thereafter, that the action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of Title 28, United States Code, and all references thereto. Thus, the requisite certification having been obtained regarding Dr. Cruden-Parham; Lisa Wyatt, CNM; Rebecca Pfender, CNM, C-C-NP; and Shenandoah, the removal of this action is ripe.

5. Title 28 U.S.C. § 2679(d)(2) further provides that the Certification of Scope of Employment “shall conclusively establish scope of office or employment for purposes of removal.”

WHEREFORE, this action now pending in the Circuit Court of Berkeley County, West Virginia, is properly removed therefrom to this Court pursuant to Title 28, United States Code, Section 2679(d)(2) and Title 42, United States Code, Section 233(c).

Respectfully submitted,

WILLIAM J. IHLENFELD, II
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I Erin K. Reisenweber, hereby certify that on November 23, 2015, a true and correct copy of the foregoing Notice of Removal has been sent to counsel for all parties by U.S. Mail, addressed as follows:

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